IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 4TH OCTOBER 2006 / 12TH ASWINA 1928

OP.No. 33620 of 2002(B)

PETITIONER:

V.CHELLAPPAN PILLAI,
A.V.NILAYALAM, PRASANTHI NAGAR, EDAPALLY,
ERNAKULAM.

BY ADV. SRI.S.ANANTHAKRISHNAN
SRI.N.K.SUBRAMANIAN

RESPONDENTS:
---

1. THE SALES TAX OFFICER,
ANGAMALY.

2. THE DY. TAHSILDAR (R.R),
KANAYANOOR, ERNAKULAM.

3. M/S. NEW INDIA CONFECTIONARY &
ENTERPRISES LTD., 16/320, P.B.NO.46, N.H.ROAD,
ANGAMALLY, REP. BY ITS MG.DIRECTOR,
MR.SAJEEV K.MATHEW.

R1&2 BY G.P. SRI.GEORGEKUTTY MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/10/2006, ALONG WITH OP NO. 31950 OF 2002, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.56820/2002 IN O.P. NO.33620/2002

DISMISSED:

4.10.2006 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF R.R. NOTICE DT.24.10.2002 ISSUED BY R2.

P2: TRUE COPY OF THE CERTIFICATES ISSUED BY THE REGISTRAR OF COMPANIES DT. NIL.

P3: TRUE COPY OF THE LETTER DT.5.6.2000 SUBMITTED BY PETITIONER BEFORE R1.

P4: TRUE COPY OF ORDER DT.22.1.2002 ISSUED BY R1.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

.....

O.P. Nos.31950 & 33620 of 2002

.....

Dated this the 4th day of October, 2006.

JUDGMENT

The petitioners are challenging revenue recovery proceedings for recovery of arrears of sales tax due from M/s.New India Confectionery & Enterprises Ltd. for the assessment year 1993-94. According to the petitioners, they are only shareholders and are not even directors of the company. Even though O.Ps. are pending for the last 4 years, from the Government side no responsible action is taken by filing a proper counter affidavit. The KGST Act does not provide for recovery of arrears of tax from shareholders of the company. However, directors of the private limited company are made liable under Section 26C of the KGST Act. It is for the recovery authorities to be conversant with the statutory provisions and to take action and proceed for recovery under the Revenue Recovery Act against those liable under the statute. The Sales Tax Officer should co-ordinate with the recovery authority for identifying the persons liable and recover the arrears from the persons liable under the KGST Act read with the Revenue Recovery Act. The O.Ps. are disposed of with direction to the Tahsildar to proceed for recovery against any member or director of the company only after holding them individually liable with reference to the statutory provisions or agreements or bonds executed and until individual orders are issued against members or directors or guarantors or those who executed bond for the company,

no individual recovery shall be made against petitioners. However, it would be open to the recovery authorities to attach and sell the assets of the defaulter-company without any proceeding.

C.N.RAMACHANDRAN NAIR
Judge

pms